

**INITIAL STATEMENT OF REASONS  
FOR  
PROPOSED BUILDING STANDARDS  
OF THE  
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

**REGARDING THE 2013 CALIFORNIA GREEN BUILDING STANDARDS CODE,  
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 11  
(INDOOR POTABLE WATER USE REDUCTION STANDARDS)**

**(HCD EF 03/15)**

The Administrative Procedure Act (APA) requires that an Initial Statement of Reasons be available to the public upon request when rulemaking action is being undertaken. The following information required by the APA pertains to this particular rulemaking action:

**STATEMENT OF SPECIFIC PURPOSE, PROBLEM, RATIONALE and BENEFITS:**

(Government Code Section 11346.2(b)(1)) requires a statement of specific purpose of each adoption, amendment, or repeal and the problem the agency intends to address and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem the agency intends to address for which it is proposed. The statement shall enumerate the benefits anticipated from the regulatory action, including the benefits or goals provided in the authorizing statute.)

**1) The Public Problem, Administrative Requirement, or Other Circumstance Addressed.**

**Administrative Requirement:** Health and Safety Code Section 17921 directs the Department of Housing and Community Development (HCD) to propose adoption, amendment or repeal of building standards for the protection of public health, safety and general welfare. Health and Safety Code Section 17928 provides HCD authority to consider proposing as mandatory buildings standards green building features determined by the HCD to be cost effective and feasible to promote greener construction. The California Building Standards Law also provides for the California Building Standards Commission (CBSC) to act upon emergency standards if the proposing agency has made the finding of emergency in compliance with Government Code Section 11346.1. This regulatory action is part of conducting a certifying rulemaking process for purposes of permanent adoption of emergency regulations approved by the CBSC.

**2) Specific Purpose**

This regulatory action makes critically needed changes to the California Building Standards Code, specifically the 2013 California Green Building Standards Code (CALGreen) Section 4.303, as related to reduction of indoor residential potable water use. This action will align the requirements for flush volume of urinals and flow rate of residential lavatory faucets in CALGreen with the recently modified requirements in the California Code of Regulations (CCR), Title 20, Appliance Efficiency Regulations approved by the California Energy Commission.

As an emergency regulation, the proposed building standards became effective on October 22, 2015, after the approval by the CBSC on October 21, 2015, and subsequent filing with the Secretary of State. These regulations were adopted on an emergency basis to reconcile the conflict between the regulations for urinals and lavatory faucets in CCR, Title 20 (effective January 1, 2016 for urinals, and July 1, 2016, for lavatory faucets), and building standards in CCR, Title 24, specifically the 2013 CALGreen. Pursuant to Government Code Section 11346.1, the subject emergency building standards will remain in effect for 180 days, unless the certifying rulemaking process is completed. The current rulemaking activities (certification of the emergency approved building standards) are necessary in order for the emergency building standards to become permanent, and to be published for inclusion in CALGreen.

Adoption of these emergency standards will apply the proposed mandate for the 2013 California Green Building Standards Code (California Code of Regulations (CCR), Title 24, Part 11), for the following programs:

- a) **State Housing Law:** relative to residential occupancies, buildings or structures accessory thereto and as provided in Health and Safety Code Section 17921.
- b) **Employee Housing Act:** relative to any building or structure or outdoors on premises or property in accordance with Health and Safety Code Section 17040.

- c) **Mobilehome Parks or Special Occupancy Parks:** relative to the use of building systems in or on any permanent buildings, accessory buildings, and structures under the ownership and control of the park operator within the park in accordance with Health and Safety Code Section 18300 for mobilehome parks, and Health and Safety Code Section 18865 for special occupancy parks.
- d) **Factory-Built Housing Law:** relative to residential buildings, dwellings or portions thereof, or building components, or manufactured assemblies in accordance with Health and Safety Code Section 19990.

### 3) Rationale for Necessity

#### Necessity for adoption of original emergency regulations.

Governor Brown's Executive Order B-29-15 (April 1, 2015) provided a summary of the ongoing drought conditions in California starting with declarations for a State of Emergency (January 17, 2014) and Continued State of Emergency (April 25, 2014); evidence of a record low snowpack, decreased water levels in reservoirs, reduced river flows, and declining supplies in underground water basins. In addition, the Governor acknowledged that a distinct possibility exists for drought conditions to continue. Further, the Executive Order found that conditions of extreme peril to the safety of persons and property continue to exist due to water shortage and drought conditions with which local authority is unable to cope. To address these concerns, the Executive Order specified that strict compliance with identified statutes and regulations would prevent, hinder, delay, or mitigate the effects of the drought.

Given the extensive code adoption process, adherence to the current 2015 Triennial Code Adoption Cycle schedule would make the proposed building standards effective at the local level on January 1, 2017. Deadlines for proposed changes in the 2013 Intervening Code Cycle have already passed and the approved changes, effective July 1, 2015, have already been published.

A delay of nearly 12 months in the effective date for measures reducing indoor use of potable water in building standards creates conflict with Title 20 appliance efficiency regulations, and does not address the Governor's declared emergency for the effective conservation of California's limited water resources. In view of the urgency to conserve California's water resources, as deemed essential by the Governor's Executive Order and prior proclamations, HCD proposes the adoption of these building standards through the emergency adoption process.

#### Necessity for permanent adoption of emergency regulations.

Emergency regulations are effective for a period of 180 days after filing with the Secretary of State. The original drought emergency conditions necessitating the emergency regulations are still ongoing; therefore, it is essential that the indoor water reduction measures in CALGreen continue to be enforced. In addition, it is necessary to solicit public comment from stakeholders, enforcing agencies, and other state agencies to ensure that the proposed regulations are still relevant.

### **Specific Proposed Regulatory Actions:**

In response to State of Emergency proclamations issued by Governor Brown in January and April of 2014, and in particular Executive Order B-29-15 (issued April 1, 2015), HCD is proposing these building standards pertaining to the reduction of allowable flow rates of wall mounted urinals and residential lavatory faucets in residential buildings to be adopted as permanent regulations. HCD has developed the following building standards, based on prior adopted emergency regulations that amend the 2013 California Green Building Standards Code (Part 11, Title 24, California Code of Regulations) as follows:

- Effective January 1, 2016, amends Chapter 4, Section 4.303.1.2, reducing the effective flush volume of wall mounted urinals to not exceed 0.125 gallons per flush.
- Effective July 1, 2016, amends Chapter 4, Section 4.303.1.4.1, reducing the maximum flow rate of residential lavatory faucets to not exceed 1.2 gallons per minute at 60 psi.

## 1. CHAPTER 4 - RESIDENTIAL MANDATORY MEASURES

### *Division 4.3 Water Efficiency and conservation*

#### **SECTION 4.303 - INDOOR WATER USE**

##### **Section: 4.303.1.2 Urinals.**

**Rationale:** HCD proposes to amend the above referenced section. HCD proposes to change the required effective flush volume of wall mounted urinals to 0.125 gallons per flush, and to clarify that this mandate becomes effective on January 1, 2016. Currently Section 4.303.1.2 mandates an effective flush volume of urinals in residential buildings not to exceed 0.5 gallons per flush.

The newly proposed amendment, including the terminology ("wall mounted" and "all other" urinals) is consistent with the flow rate and effective date (January 1, 2016) adopted by the California Energy Commission (CEC) in CCR Title 20 (Appliance Efficiency Regulations) on April 8, 2015. The CEC's new mandate is based on the Governor's Executive Order B-29-15, issued on April 1, 2015.

##### **Section: 4.303.1.4.1 Residential lavatory faucets.**

**Rationale:** HCD proposes to amend the above referenced section. HCD proposes to change the required maximum flow rate of residential lavatory faucets to 1.2 gallons per minute at 60 psi, and to clarify that this mandate becomes effective on July 1, 2016. Currently Section 4.303.1.4.1 mandates a maximum flow rate of 1.5 gallons per minute.

The proposed amendment is consistent with the maximum flow rate adopted by the California Energy Commission (CEC) in Title 20 (Appliance Efficiency Regulations) on April 8, 2015. The CEC's new mandate is based on the Governor's Executive Order B-29-15, issued on April 1, 2015.

---

---

#### **TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENTS:**

(Government Code Section 11346.2(b)(3)) requires an identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the regulation(s).

The California Energy Commission's Appliance Efficiency Regulations adopted in the California Code of Regulations, Title 20, Division 2, Chapter 4, Article 4, Section 1605 *et seq.*

#### **STATEMENT OF JUSTIFICATION FOR PRESCRIPTIVE STANDARDS:**

(Government Code Section 11346.2(b)(1)) requires a statement of the reasons why an agency believes any mandates for specific technologies or equipment or prescriptive standards are required.)

HCD is statutorily required to adopt by reference model building codes, which contain prescriptive standards; however, CALGreen is not based on a model code. Prescriptive standards provide the following: explicit guidance for certain mandated requirements; consistent application and enforcement of building standards while also establishing clear design parameters; and ensure compliance with minimum health, safety and welfare standards for owners, occupants and guests. In this rulemaking, HCD proposes prescriptive standards for indoor water conservation, consistent with the Appliance Efficiency Regulations adopted in the California Code of Regulations, Title 20, Division 2, Chapter 4, Article 4.

There is no performance standard option for urinals and residential lavatory faucets.

#### **CONSIDERATION OF REASONABLE ALTERNATIVES**

(Government Code Section 11346.2(b)(4)(A)) requires a description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific action or procedures, the imposition of performance standards shall be considered as an alternate. It is not the intent of this paragraph to require the agency to artificially construct alternatives or describe unreasonable alternatives.)

These regulations were developed and adopted on an emergency basis in response to State of Emergency proclamations issued by Governor Brown in January and April of 2014, and in particular Executive Order B-29-15 (issued April 1, 2015) and to immediately implement reduction of indoor potable water use for newly constructed residential buildings. These measures (flow rates for urinals and lavatory faucets) were adopted in coordination with the California Building Standards Commission (CBSC) and other stakeholders, after consideration of the amended Appliance Efficiency Regulations and other alternatives that would result in less immediate impact.

The determination of these meetings was that it is imperative that building standards be adopted within the California Building Standards Code to ensure consistency with the Appliance Efficiency Regulations. These regulations propose a water use standard that provides for alternatives for less water use, and corresponding “sold by” and “manufactured by” dates.

**REASONABLE ALTERNATIVES THE AGENCY HAS IDENTIFIED THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS.**

(Government Code Section 11346.2(b)(4)(B)) requires a description of any reasonable alternatives that have been identified or that have otherwise been identified and brought to the attention of the agency that would lessen any adverse impact on small business.)

HCD has determined that this regulatory action would have no significant adverse economic impact on California business enterprises and individuals, including the ability of California businesses to compete with businesses in other states, as the same reduced flow rates for urinals and lavatory faucets were already approved by the California Energy Commission in Title 20, Appliance Efficiency Regulations.

**FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE OF NO SIGNIFICANT ADVERSE IMPACT ON BUSINESS.**

(Government Code Section 11346.2(b)(5)(A)) requires the facts, evidence, documents, testimony, or other evidence on which the agency relies to support an initial determination that the action will not have a significant adverse economic impact on business)

None.

**ASSESSMENT OF EFFECT OF REGULATIONS UPON JOBS AND BUSINESS EXPANSION, ELIMINATION OR CREATION**

(Government Code Sections 11346.3(b)(1) and 11346.5(a)(10))

HCD has assessed whether or not and to what extent this proposal will affect the following:

- The creation or elimination of jobs within the State of California.

**These regulations will not affect the creation, or cause the elimination, of jobs within the State of California.**

- The creation of new businesses or the elimination of existing businesses within the State of California.

**These regulations will not affect the creation or the elimination of existing businesses within the State of California.**

- The expansion of businesses currently doing business with the State of California.

**These regulations will not affect the expansion of businesses currently doing business within the State of California.**

- The benefits of the regulations to the health and welfare of California residents, worker safety, and the state’s environment.

**These regulations will update and improve minimum existing building standards, which will provide increased protection of public health and safety, worker safety and the environment.**

**ESTIMATED COST OF COMPLIANCE, ESTIMATED POTENTIAL BENEFITS, AND RELATED ASSUMPTIONS USED FOR BUILDING STANDARDS**

(Government Code Section 11346.2(b)(5)(B)(i)) states if a proposed regulation is a building standard, the initial statement of reasons shall include the estimated cost of compliance, the estimated potential benefits, and the related assumptions used to determine the estimates.)

The proposed regulatory changes related to mandatory requirements in CALGreen do not require any additional mandates than the Appliance Efficiency Regulations, adopted by the California Energy Commission. Any cost increases will result as a change in the Appliance Efficiency Regulations and availability of the appliances, and direct impacts of implementation by local agencies and not from the inclusion of the same requirement in the CALGreen Code.

## **DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS**

(Government Code Section 11346.2(b)(6)) requires a department, board, or commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshal to describe its efforts, in connection with a proposed rulemaking action, to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues. These agencies may adopt regulations different from these federal regulations upon a finding of one or more of the following justifications: (A) The differing state regulations are authorized by law and/or (B) The cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment.)

These regulations do not duplicate nor conflict with federal regulations.